Filed 9/14/09 P. v. Bennett CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOEL ALONZO BENNETT, Defendant and Appellant.	G040479 (Super. Ct. No. 06WF1968) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Thomas M. Goethals, Judge. Affirmed.

Katharine Eileen Greenebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Rhonda Cartwright-Ladendorf and Stacy Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

The trial court sentenced defendant Joel Alonzo Bennett to 21 years in state prison after he entered a guilty plea to one count of robbery and admitted suffering prior serious or violent felony convictions. Before entering the plea defendant had unsuccessfully moved to suppress evidence pursuant to Penal Code section 1538.5. Defendant appeals, contending the trial court erred by denying his suppression motion because the police conducted a warrantless search of his car without probable cause to do so. He argues in the alternative that since the vehicle search did not result in the seizure of any evidence relevant to the current robbery, we should nullify the trial court's suppression ruling because, otherwise, he will be foreclosed from having appellate review of the issue. We reject defendant's arguments and affirm the trial court's ruling.

FACTS AND PROCEDURAL HISTORY

In the early morning hours of July 8, Gardena Police officers Mike Nguyen and Eric Williams went to Hustler Casino in response to a dispatch call that a robbery suspect was at the casino. Nguyen spoke with Cristin Nebel, a casino employee. Nebel told Nguyen that five days earlier, after getting off work, she went to another casino, won some money, and then drove to a bar in Los Alamitos. As she was entering the bar, a man approached her asking a question. He then pushed Nebel to the ground, took her purse, and fled.

While at work on July 8, Nebel saw the man who had robbed her in Hustler Casino. She contacted security who, in turn, called the police.

Defendant was detained and, after Nebel positively identified him as the robber, the police placed him under arrest. The police searched defendant and found a set of car keys with an attached alarm button.

At Nguyen's direction, Williams walked through the casino's parking lot using the alarm button to locate the car. Upon finding the vehicle Williams searched it,

discovering a concealed weapon, two women's purses, and a wallet. None of the items belonged to Nebel. When asked why the vehicle was searched, Nguyen testified it occurred "[i]ncident to the arrest, and to see where his car was at, [plus] if there was . . . anything inside the car that was pertinent to the crime."

The trial court denied defendant's motion. It held the police had lawfully arrested defendant based on Nebel's identification of him as the person who robbed her; the discovery of the car keys resulted from a valid search incident to the arrest; using the attached alarm button to locate defendant's car did not constitute a search; and the search of the car was valid because the officers had probable cause to believe it contained either the instrumentalities to commit a robbery or the fruits of the prior offense.

DISCUSSION

1. Search of Defendant's Car

On appeal, defendant challenges the trial court's finding the police could lawfully search his car. He claims Nguyen and Williams relied solely on a "'mere hunch'" because "the prosecution was unable to point to any 'specific and articulable facts' on which the officers relied, which le[]d them to believe a car that [he] might have driven to the casino where he was arrested contained any fruits of the robbery in question." We disagree.

Under the automobile exception to the Fourth Amendment's warrant requirement, police officers may conduct a warrantless search of a motor vehicle where they have probable cause to believe it contains contraband or evidence of criminal activity. (*United States v. Ross* (1982) 456 U.S. 798, 809 [102 S.Ct. 2157, 72 L.Ed.2d 572]; *Carroll v. United States* (1925) 267 U.S. 132, 149 [45 S.Ct. 280; 69 L.Ed. 543].) Recently, in *Arizona v. Gant* (2009) 556 U.S. ___ [129 S.Ct. 1710, 173 L.Ed.2d 485], the court reaffirmed this rule, noting "established exceptions to the warrant requirement

authorize a vehicle search under additional circumstances when safety or evidentiary concerns demand" such as when "there is probable cause to believe a vehicle contains evidence of criminal activity . . . ." (*Id.* at p. ___ [129 S.Ct. at p. 1721].)

"Probable cause for a search exists where an officer is aware of facts that would lead a [person] of ordinary caution or prudence to believe, and conscientiously to entertain, a strong suspicion that the object of the search is in the particular place to be searched. [Citations.]" (*People v. Dumas* (1973) 9 Cal.3d 871, 885; see also *United States v. Ross, supra,* 456 U.S. at p. 808, fn. 10; *People v. Weston* (1981) 114 Cal.App.3d 764, 774.) This standard is a "'"practical, nontechnical conception"' that deals with '"the factual and practical considerations of everyday life on which reasonable and prudent [persons], not legal technicians, act."' [Citations.]" (*Maryland v. Pringle* (2003) 540 U.S. 366, 370 [124 S.Ct. 795, 157 L.Ed.2d 769].) "The probable-cause standard is incapable of precise definition . . . because it deals with probabilities and depends on the totality of the circumstances. [Citation.]" (*Id.* at p. 371.)

Thus, to determine whether the police had probable cause to search defendant's car, we examine the totality of the circumstances leading up to the search and then decide if there are "specific articulable facts which give reasonable cause to believe that seizable items are contained in the vehicle at the time of the search." (*People v. Weston, supra,* 114 Cal.App.3d at p. 774.) In this respect, we note automobile search cases have often held "[t]he automobile occupies a lowly status in the pantheon of privacy expectations afforded by the federal and state Constitutions [citation] . . . ." (*Ibid.*)

Nebel positively identified defendant as the person who robbed her several days earlier at a location Nguyen estimated was some 15 miles away from Hustler Casino. Because they found car keys on defendant and people in Southern California generally use motor vehicles to get around, the officers reasonably concluded he had arrived at Hustler Casino in a car. Moreover, the trial court noted Nebel's robbery was

possibly casino-related and defendant was found at the casino where she was employed a few days later. Relying on this information, the officers could reasonably conclude the fruits of that robbery or weapons were in defendant's car.

Defendant argues the passage of time between Nebel's robbery and the arrest made the search unreasonable. In *People v. Weston, supra,* 114 Cal.App.3d 764, the appellate court upheld a warrantless vehicle search where the police arrested the defendant four days after an armed robbery, citing the "relative recency of the crime." (*Id.* at pp. 774-775.) Although this case involved a five-day gap, there is no bright line rule. We agree with the trial court that, while the passage of time is relevant, the delay was not a controlling factor in determining whether the police had probable cause to search defendant's car.

Next, defendant relies on the fact his car was not linked to the robbery. Again, this fact is not controlling. In *People v. Dumas, supra,* 9 Cal.3d 871, police officers obtained a warrant authorizing them to search the defendant's residence for stolen bonds. They entered the residence, arrested the defendant and conducted a search, but failed to locate any securities. Discovering the vehicle registration and keys to a car parked on the street about 100 feet away, the police searched it, finding the contraband.

The Supreme Court agreed the vehicle search could not be justified as one conducted pursuant to the residential search warrant (*People v. Dumas, supra,* 9 Cal.3d at p. 880) but, applying the automobile exception, affirmed the trial court's denial of a motion to suppress evidence. "[T]he police officers were empowered under the *Carroll* doctrine to search defendant's automobile so long as it can be demonstrated that (1) exigent circumstances rendered the obtaining of a warrant an impossible or impractical alternative, and (2) probable cause existed for the search. We conclude that both of these conditions existed at the time of the search. The United States Supreme Court has held that exigent circumstances justifying a warrantless automobile search exist where the police unforeseeably discover facts furnishing probable cause for the search

under circumstances in which the evidence may be destroyed or removed from the reach of the officers if a search or seizure is not carried out immediately. [Citations.] Here the officers were apparently unaware that defendant possessed an automobile at the time they obtained the warrant. They unexpectedly discovered the existence of the vehicle only after they had entered defendant's apartment. There was at least one other person in the apartment at the time of defendant's arrest who would have been in a position to move the car or destroy the evidence if the police did not conduct an immediate search or seizure. . . ." (*Id.* at pp. 884-885.)

This case is analogous to *Dumas*. The police were unaware of defendant's car until they found the keys to it during the search of his person incident to his arrest. Given the fact Nebel's robbery had occurred late at night several days earlier at a location some 15 miles away, the police had good reason to believe the vehicle contained fruits of that crime or the implements necessary to commit other robberies. As for the exigency requirement, the Supreme Court has recognized "[u]nder the governing authorities, (1) the ready mobility of automobiles, (2) the lesser expectation of privacy in their contents, (3) the significant administrative expense, delay and risk of loss of contents entailed in requiring the police either to secure all automobiles at the scene or to tow all suspected vehicles to a securely maintained depot, and (4) the need for clear guidelines by which police may guide and regulate their conduct, have led to the adoption of a general rule permitting the police to conduct an immediate, on-the-scene warrantless search of an automobile under such circumstances. [Citations.]" (*People v. Superior Court (Valdez)* (1983) 35 Cal.3d 11, 16.) These factors apply here as well.

Finally, defendant argues the officers could not search the car because he was not in the vehicle when arrested. We reject this argument. That was also true in *Dumas*. While Nguyen mentioned the search incident to arrest exception as a basis for locating and searching defendant's car, that was not the sole basis he cited and the trial court did not rely on that exception to deny defendant's suppression motion. As

discussed above, the police had objectively reasonable grounds to believe defendant's car contained evidence of Nebel's robbery or the means to commit the offense. Consequently, the facts justified a warrantless search under the automobile exception.

2. The Evidence is Relevant

Since the police did not find any evidence of Nebel's robbery during the search of defendant's car, he alternatively argues that, if this court concludes the items seized from the car lack relevance to this prosecution and chooses not to consider the merits of the order denying his motion to suppress evidence, we declare the ruling a nullity. While the police officers did not find evidence relevant to this case, they did find items taken from other robbery victims. Had defendant chosen to go to trial and deny robbing Nebel, the property found in his car arguably could be relevant as evidence of prior acts. (Evid. Code, § 1101.) Thus, we reject the defendant's alternative contention.

DISPOSITION

The judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

O'LEARY, J.

FYBEL, J.